

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-259

In the Matter of

Amendment of Section 73.202(b), RM-8341
Table of Allotments, RM-8421
FM Broadcast Stations.
(Earle, Pocohantas, and Wilson, Arkansas,
and Como and New Albany, Mississippi)¹

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: July 28, 1995;

Released: August 3, 1995

By the Chief, Allocations Branch:

1. The Commission has before it for consideration a petition for rulemaking filed on behalf of Earle Broadcasting, requesting the allotment of FM Channel 234C3 to Earle, Arkansas, as that community's first local aural transmission service.² Earle Broadcasting has stated that it will apply for a permit to construct an FM station on the newly allotted channel, should its petition be granted. The Commission released a *Notice of Proposed Rulemaking*, 8 FCC Rcd 7093 (1993), in response to Earle Broadcasting's petition, to which Broadcasters & Publishers, Inc. (BPI) submitted a counterproposal. Its counterproposal has two alternative options, as discussed in detail below.³

2. *Comments.* BPI, licensee of station WWKZ(FM), Channel 278C, New Albany, Mississippi, petitions the Commission to reallocate the channel to Como, Mississippi, as that community's first local aural transmission service, and to modify its community of license accordingly, pursuant to the provisions of Section 1.420(i) of the Commission's Rules. If its petition is granted, BPI states that it will file an application to make minor changes in the station's facilities and to change the station's community of license. To accommodate this proposal, BPI requests the Commission to substitute Channel 234A for Channel 279A at Wilson, Arkansas, a proposal that is mutually exclusive with Earle Broadcasting's proposal.⁴ The former permittee of the Wilson channel, Pollack Broadcasting Company (Pollack), has pending a petition for reconsideration of the cancellation

of its construction permit.⁵ However, it states that, should the Commission grant its petition for reconsideration, it will consent to the channel substitution proposed by BPI and will seek to modify its construction permit to effect the required site and frequency changes.

3. Under the first of BPI's two alternative proposals, no further modifications to the FM Table of Allotments are requested. Thus, BPI acknowledges that Earle would be prevented from acquiring its first local aural transmission service. However, it puts forth a second alternative that would further amend the FM Table of Allotments, should the Commission determine that the public interest would be better served by providing Earle with an FM channel. Under this second alternative, BPI proposes the allotment of Channel 280C3 to Earle, instead of Channel 234C3. To accommodate this modification of Earle Broadcasting's proposal, BPI requests the Commission to substitute Channel 281A for Channel 280A at Pocohantas, Arkansas, and to modify the license for station KPOC-FM accordingly. Without a subsequent change in transmitter site, station KPOC-FM would no longer meet the Commission's separation requirements. However, the licensee of the Pocohantas station, Scott Media Services (Scott), has consented to the proposed channel substitution and site change, and BPI has agreed to reimburse Scott's reasonable and documented expenses it may incur in effecting the changes.⁶

4. BPI notes that Como is an incorporated community with a mayor, a board of aldermen, and a 1990 Census population of 1,378 people. It adds that Como provides police, fire, water, and sewer services to its residents and businesses and that it has a post office and city library.

5. *Discussion.* We agree with BPI that Channel 280C3 is available for allotment to Earle, Arkansas in lieu of our previously proposed Channel 234C3, and that the allotment of Channel 280C3 would make it possible to provide new service to both Earle and Como, as requested by both petitioners. Consequently, we will allot Channel 280C3 to Earle as that community's first local transmission service. To accommodate this allotment, we will substitute Channel 281A for Channel 280A at Pocohantas, Arkansas, at reference coordinates 36°18'02" North, 90°53'55" West, and we will modify Station KPOC-FM's license accordingly. We can make these changes without issuing an Order to Show Cause why the changes should not be made because the licensee has consented to changes in both its frequency and transmitter site.

6. We now address the merits of BPI's counterproposal to reallocate Channel 278C from New Albany to Como, Mississippi, and to modify the license for station WWKZ(FM) accordingly. Under the Commission's change of community *Report and Order* and *MO&O*,⁷ we must compare BPI's proposal with the existing arrangement of allotments under our FM allotment priorities to determine which would constitute a "preferential arrangement of allotments."⁸ The

¹ The communities of Pocohantas and Wilson, Arkansas, and Como and New Albany, Mississippi, have been added to the caption.

² The 1990 U.S. Census records Earle as an incorporated community with a population of 3,393 people.

³ The Commission sought comment on BPI's counterproposal in *Public Notice* 41498, January 28, 1994.

⁴ While Earle Broadcasting has submitted comments in support of its own proposal, it has not addressed BPI's mutually exclusive proposal.

⁵ Before being deleted, the station's call sign was KOSE-FM.

⁶ BPI asserts that the population served by the Pocohantas station would increase from 13,195 to 17,639 people if its facilities were so changed.

⁷ *Report and Order* in MM Docket No. 88-526, 4 FCC Rcd 4870 (1989), *recon. granted in part and denied in part*, 5 FCC Rcd 7094 (1990).

⁸ The FM allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. Co-equal weight is given to priorities (2) and (3). See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88, 92 (1982).

new facility at Como would provide that community with its first local service, thereby implicating the third priority. We recognize, however, that the reallocation would result in a loss area of 46,606 people who would no longer receive the New Albany station. However, our concerns about this loss area would be mitigated by the fact that 85% of the population (39,818 people) in the loss area would remain served by at least five full-time aural reception services. Further, no area would be served by fewer than three such services, and New Albany itself would retain two local transmission services.⁹ New Albany would also remain within the station's city-grade contour. The gain area (for the Como facility) would incorporate 671,624 people, 26,668 of whom currently are served by four or fewer full-time reception services.

7. In contrast, retaining the existing arrangement of allotments would not trigger priority number three, but instead would implicate lower allotment priority four: other public interest factors. Specifically, New Albany would have its third local aural service, a disruption in service would be avoided, and no underserved area would become more underserved. Because BPI's proposal triggers a higher allotment priority than does the existing arrangement, the proposal should be favored. Specifically, allotting the first local service to Como, a community of 1,378 people, is more important than retaining a third local service at New Albany, a community of 6,775 people.

8. We have determined that Channel 280C3 can be allotted to Earle at reference coordinates 35°15'20" North, 90°38'52" West, Channel 234A can be substituted for Channel 279A at Wilson at reference coordinates 35°29'46" North, 90°10'04" West, and Channel 278C can be reallocated from New Albany to Como at reference coordinates 34°32'56" North, 89°17'04" West, all in compliance with the Commission's minimum distance requirements. Further, as noted above, Scott has consented to the changes in its existing authorization that are necessary to effect BPI's proposal. Accordingly, in accordance with the provisions of Section 1.420(i) of the Commission's Rules, we shall modify the license for station WWKZ(FM) to specify operation on Channel 278C at Como, Mississippi, in lieu of its present use at New Albany, Mississippi.

9. *Conclusion.* Pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b), and 0.283 of the Commission's Rules, IT IS ORDERED that, effective **September 18, 1995**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, to read as follows:

City	Channel No.
Earle, Arkansas	280C3
Pocohantas, Arkansas	281A
Wilson, Arkansas	234A
Como, Mississippi	278C
New Albany, Mississippi	294C2

10. The window period for filing applications for Channel 280C3 at Earle, Arkansas, will open on **September 18, 1995** and close on **October 19, 1995**.

11. IT IS FURTHER ORDERED that pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of station WWKZ (FM) IS MODIFIED to specify operation on Channel 278C, Como, Mississippi, in lieu of New Albany, Mississippi, subject to the following conditions:

(a) Within 90 days of the effective date of this *Report and Order*, the licensee shall submit to the Commission a minor change application requesting the changes in transmitter site and community of license, as specified above;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed as authorizing any change in station WWKZ's license except those of the transmitter site and community of license, as specified above. Any other changes, except those so specified under Section 73.1690 of the Rules, require prior authorization pursuant to an application for a construction permit (FCC Form 301).

12. IT IS FURTHER ORDERED that pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Scott Media Services for station KPOC-FM, Pocohantas, Arkansas, IS MODIFIED to specify operation on Channel 281A in lieu of Channel 280A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Report and Order*, the licensee shall submit to the Commission a minor change application requesting the changes in transmitter site and community of license, as specified above; and

(b) Nothing contained herein shall be construed as authorizing any change in station KPOC-FM's license except the channel and transmitter site, as specified above. Any other changes, except those so specified under Section 73.1690 of the Rules, require prior authorization pursuant to an application for a construction permit (FCC Form 301); and

(c) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with the station authorization except for the channel as specified above, and a license application (FCC Form 302) is filed within 10 days of commencement of program tests.

13. IT IS FURTHER ORDERED that, if the construction permit of Pollack Broadcasting Company for station KOSE-FM, Wilson, Arkansas, is reinstated, it shall specify operation on Channel 234A.

14. Pursuant to Sections 1.1104(1)(k) and (2)(k) of the Commission Rules, any party seeking a change in community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rulemaking fee when filing its application to implement the change in community of

⁹ WWZD-FM and WNAU.

license and/or upgrade. As a result of this proceeding, Broadcasters & Publishers, Inc., licensee of station WWKZ(FM), New Albany, Mississippi, is required to submit a rulemaking fee in addition to the fee required for the application to effectuate the license modification.

15. IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

16. For further information concerning the above, contact Paul R. Gordon, Mass Media Bureau, (202) 776-1653.

FEDERAL COMMUNICATIONS COMMISSION

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